

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**

**DOCKET NO. 2012-177-WS**

IN RE: Application of Tega Cay Water	)	<b>TEGA CAY WATER SERVICE'S</b>
Service, Inc. for adjustment of	)	<b>OBJECTIONS TO AND</b>
rates and charges and modifications	)	<b>MOTION TO STRIKE</b>
to certain terms and conditions	)	<b>CERTAIN TESTIMONY</b>
for the provision of water and sewer	)	<b>AND EXHIBITS OFFERED</b>
service	)	<b>ON JANUARY 8, 2013</b>

Tega Cay Water Service, Inc. ("TCWS") makes the following motions in regard to the testimony taken by the Commission in the above referenced docket at the public testimony portion of the hearing held on January 8, 2013.<sup>1</sup>

1. TCWS objects to and moves to strike the testimony of Gene Esarove at Tr. pp. 214, l. 3 – 215, l. 1 and pp. 216, l. 5 - 217, l. 5. According to Mr. Esarove, the events he related occurred five or six years ago (Tr. p. 216, l. 5-13 and p. 216, l. 14-20). TCWS therefore objects to this testimony on the grounds that is not relevant to the instant proceedings because the events to which Mr. Esarove testified occurred outside of the test year, and are too remote to have probative value. SCRE Rule 402 and SCRE Rule 403. The events to which Mr. Esarove testified are too remote to speak to the company's quality of service as it relates to these proceedings. The only conceivable relevance that Mr. Esarove's testimony could possibly have to the present case, would be as to TCWS's need to make the capital improvements for which it is now seeking a fair rate of return.

2. TCWS objects to and moves to strike the testimony of Shantel Wiley at Tr. pp. 220, l. 5 - 221, l.4, and p. 222, l. 1-21, and objects to the introduction of Exhibit No. 9. Ms. Wiley's testimony concerned a newspaper article, introduced as Exhibit 9, about TCWS customer Linda Stevenson and her efforts to organize opposition to the company's proposed rate increase. TCWS objects to Ms. Wiley's testimony and exhibit on the grounds that they are inadmissible hearsay under SCRE Rule 802. Trustees of Erskine Coll. v. Cent. Mut. Ins. Co., 270 S.C. 118, 123, 241 S.E.2d 160, 162-63 (1978). Furthermore, TCWS objects to the testimony and exhibit on the grounds that news coverage of this case is not relevant and therefore inadmissible under SCRE Rule 402,

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<sup>1</sup> All subsequent citations are to the partial Volume 2 of the case transcript, relating the testimony at the hearing held on January 8, 2013, which was provided to the parties by the court reporter on January 15, 2013. For the sake of brevity they will simply cite to the relevant page, line, and/or exhibit numbers and omit the full hearing citation. Copies of referenced pages and exhibits are attached to this motion as Exhibit A.

and that any probative value that this evidence may have is outweighed by its potential for prejudice, and therefore it is also inadmissible under SCRE Rule 403.

3. TCWS objects to and moves to strike the testimony of Karen Licausi at Tr. p. 224, l. 3-23, and pp. 226, l. 24 – p. 227, l. 8, as well as hearing Exhibit 10, introduced at Tr. p. 225, l. 1-10. In her testimony, Ms. Licausi relates a conversation with her veterinarian and attempts to ascribe her dog's illness to water provided by TCWS. Ms. Licausi's testimony and Exhibit No. 10 are inadmissible for several reasons.

- a. Ms. Licausi's testimony regarding her conversations with her veterinarian is inadmissible hearsay under SCRE Rule 402, and is also excludable due to its potential for prejudice under SCRE Rule 403.
- b. The veterinary records introduced as Exhibit 10 were not properly authenticated and are therefore inadmissible under SCRE Rule 901. The records and the handwritten notations of unknown authorship which appear upon them are also inadmissible hearsay under SCRE Rule 402 and inadmissible due to their potential for prejudice under SCRE Rule 403. The records are also incomplete as evidenced by their page numbering. For instance, the 5<sup>th</sup> page of Exhibit 10 is numbered "page 5 of 5" but the other four pages of that particular record were not provided. Similarly, the Commission was provided with: pages numbered "Page 1 of 3" and "Page 2 of 3", two pages labeled "Page 3 of 6"; two pages labeled "Page 4 of 6", and one page labeled "Page 6 of 6".
- c. Ms. Licausi offered opinion testimony as to her dog's condition as to its cause. Tr. p. 224, l. 13-23, and this testimony is inadmissible pursuant to SCRE Rule 701, which prohibits inferences or opinions from lay witnesses which are not rationally based on the perception of the witness, are not helpful to a clear understanding of the witnesses' testimony or the determination of a fact issue, and require special knowledge, skill or experience or training. Ms. Licausi offered the Commission no evidence of training or expertise which would qualify her to draw the conclusions regarding her dog's purported condition or its causes offered in her testimony.

The problem with Ms. Licausi's testimony is illustrated by the fact that she is flatly contradicted by the same veterinary records she seeks to introduce. The records make no mention of a diagnosis of "kidney failure", but on November 1, 2011 the date on which the dog's laboratory tests were conducted, show a diagnosis of a "healthy pet" for whom "Therapy [was] Not Indicated". See 7th page of Exhibit 10. The veterinarian also noted, several months later, that Ms. Licausi, said her dog was "acting fine at home, and very active, swims and runs a lot". See notation of Dr. Marrone on 5th page of Exhibit 10. While Ms. Licausi's affection and concern for her dog are understandable, she has not offered the Commission any probative or reliable evidence to support her assertion that water delivered by TCWS caused her dog to be ill.

4. TCWS objects to and moves to strike the testimony of Joyce Clark, at p. 230, l. 12-25, in which Ms. Clark relates an account of a sewerage spill which was

described to her in a note she received in her mailbox. Ms. Clark explained that the author of the note was a neighbor who provided the note after Ms. Clark asked her if “she had something she wanted me to say”. pp. 231, l. 18 – 232, l. 3. This testimony is inadmissible hearsay under SCRE Rule 802.

5. TCWS objects to and moves to strike the testimony of Kelly Macaluso at pp. 239, l. 16 – 240, l. 9. TCWS also objects to the admission of four pages of Exhibit 11 offered by Ms. Macaluso: an article from the March 2012 issue of *American Water Intelligence* about the acquisition of a holding company which is an equity owner in Utilities, Incl., TCWS’ parent company, and a press release by Corix Utilities regarding the same transaction. This testimony and the accompanying exhibits which pertain to the financial strategies being pursued by are inadmissible on the following grounds:

- a. they are not relevant under SCRE Rule 402;
- b. the testimony and exhibits are inadmissible hearsay under SCRE Rule 802. *See Trustees of Erskine Coll. v. Cent. Mut. Ins. Co., supra.*
- c. any probative value that the testimony and exhibits may have is outweighed by their potential for prejudice due to the commentary regarding the financial strategies of the non-regulated investors involved and are inadmissible under SCRE Rule 403.

To the extent that its objections and motions are denied, TCWS reserves its right to offer responsive testimony. See S.C. Const. art, I, §22.

*[signature page follows]*

Respectfully submitted,

Date:

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Scott Elliott  
Elliott & Elliott, PA  
1508 Lady Street  
Columbia, SC 29201  
(803)771-0555  
(803) 771-8010 (F)  
Sellottt.@elliottlaw.us

Charles L. A. Terreni  
TERRENI LAW FIRM, L.LC.  
1508 Lady Street  
Columbia, SC 29201  
(803)771-7228  
(803) 771-8778 (F)  
charles.terreni@terrenilaw.com

John M.S. Hoefer  
Benjamin P. Mustian  
WILLOUGHBY & HOEFER, P.A  
Post Office Box 8416  
Columbia, SC 29202  
(803) 252-3300  
(803) 256-8062 (F)  
jhoefer@willoughbyhoefer.com  
bmustian@willoughbyhoefer.com